

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

I.T.R. Nos.48, 48-A, 48-B, 48-C, 48-D, 48-E & 48-F of 1997
Date of decision: 02.11.2006

The Commissioner of Wealth-tax, Jalandhar.

---Applicant

Vs.

M/s Cine Payal, Jalandhar.

-----Respondent

**CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR JUSTICE RAJESH BINDAL**

Present: Dr. N.L. Sharda, Advocate for the revenue.

ORDER:

Following questions of law have been referred for opinion of this Court by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar, arising out of its order dated 29.04.1993 in I.T.A. Nos.434/(ASR)/90, 585/(ASR)/88, 943/(ASR)/88, 1154/(ASR)/89, 909/(ASR)/90, 789/(ASR)/89 and 1800/(ASR)/89 in respect of assessment years 1982-83, 1983-84, 1984-85, 1985-86, 1986-87, 1987-88 and 1988-89 respectively:-

I.T.R. No.48 of 1997

For the assessment year 1982-83:

- “(i) Whether, on the facts and in the circumstances of the case, the I.T.A.T. was right in law in deleting the addition of Rs.49,238/- made by the Assessing Officer by holding that the income of M/s C.P. Enterprises is not to be assessed in the hand of the assessee?”

I.T.R. No.48-A of 1997

For the assessment year 1983-84:

- “(ii) Whether, on the facts and in the circumstances of the case, the I.T.A.T. was right in law in deleting the addition of Rs.92,160/- made by the Assessing Officer and confirmed by the first Appellate Authority by holding that the income of M/s C.P. Enterprises is not to be assessed in the hand of the assessee?”

I.T.R. No.48-B of 1997

For the assessment year 1984-85:

- “(iii) Whether, on the facts and in the circumstances of the case, the I.T.A.T. was right in law in deleting the addition of Rs.1,24,390/- made by the Assessing Officer and confirmed by the first Appellate Authority by holding that the income of M/s C.P. Enterprises is not to be assessed in the hand of the assessee?”

I.T.R. No.48-C of 1997

For the assessment year 1985-86:

- “(iv) Whether, on the facts and in the circumstances of the case, the I.T.A.T. was right in law in deleting the addition of Rs.1,10,460/- made by the Assessing Officer and confirmed by the first Appellate Authority by holding that the income of M/s C.P. Enterprises is not to be assessed in the hand of the assessee?”

I.T.R. No.48-D of 1997

For the assessment year 1986-87:

- “(v) Whether, on the facts and in the circumstances of the case, the I.T.A.T. was right in law in deleting the addition of Rs.61,841/- made by the Assessing Officer and confirmed by the first Appellate Authority by holding that the income of M/s C.P. Enterprises is not to be assessed in the hand of the assessee?”

I.T.R. No.48-E of 1997

For the assessment year 1987-88:

- “(vi) Whether, on the facts and in the circumstances of the case, the I.T.A.T. was right in law in deleting the addition of Rs.93,528/- made by the Assessing Officer and confirmed by the first Appellate Authority by holding that the income of M/s C.P. Enterprises is not to be assessed in the hand of the assessee?”

I.T.R. No.48-F of 1997

For the assessment year 1988-89:

“(vii) Whether, on the facts and in the circumstances of the case, the I.T.A.T. was right in law in deleting the addition of Rs.79,866/- made by the Assessing Officer and confirmed by the first Appellate Authority by holding that the income of M/s C.P. Enterprises is not to be assessed in the hand of the assessee?”

The Assessing Officer made addition to the income of the assessee which is a cinema representing income of the canteen contractor and cycle-stand contractor by holding that the said contractors were wives/close relations of the partners and their income was the income of the cinema itself. This view was set aside by the Tribunal relying upon the provisions of Benami Transactions (Prohibition) Act, 1988 (for short, “the Benami Act”).

We are of the view that provisions of the Benami Act have no relevance for determination of the question as to whom the income belonged. Having regard to the facts and circumstances of the case, the question whether income was of the assessee, had to be gone into in accordance with the provisions of Income-tax Act, 1961. The Tribunal has not gone into the correctness of the findings recorded by the Assessing officer and CIT(A) that the so-called contractors were non-existent.

In these circumstances, we deem it appropriate to refer the matter back to the Tribunal for a fresh decision in accordance with law.

**(ADARSH KUMAR GOEL)
JUDGE**

November 02, 2006
ashwani

**(RAJESH BINDAL)
JUDGE**